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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/648,113	08/26/2003	Charles Kannankeril	D-30303-02	3147

7590

02/23/2005

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EXAMINER

LONEY, DONALD J

ART UNIT	PAPER NUMBER
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1772

DATE MAILED: 02/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/648,113

Applicant(s)

KANNANKERIL ET AL.

Examiner

Donald Loney

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1772

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-25 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>11/12/03, 03/29/04</u> . | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Double Patenting

1. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

2. Claims 1-25 are provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1-25 of copending Application No. 10/302,004. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over either Simhaee (6423166) or Larson (4096306) in view of the applicant's discussion of the prior art and any of Wu et al (3873643), Shida et al (4087587) or Adur (4394485).

Both Simhaee and Larson teach to form a bubble laminate that contains a plurality of inflatable cells connected in series. Refer to figures 1 and 2, the Abstract and column 2, lines 35-65 in Simhaee. Refer to figures 1 and 10, the Abstract and column 3, line 39-column 4, line 25 in Larson. The primary references differ from the prior art in that they fail to teach a multilayered film as recited that contains the particular tie layer (i.e. adhesive) and/or the specific properties pertaining to the strength of the article as recited in the claims. Larson does teach that multilayered films can be used (column 4, line 5) for forming a gas barrier.

In the applicants discussion of the prior art on pages 1 and 2 of the specification the applicant discloses that it is known to use a multilayered gas barrier film as recited in bubble sheets that contain spaced apart bubbles (i.e. not interconnected in series). The applicant also discloses that the tie layer contains an anhydride modified olefin polymer. This prior art teaching discloses that a 141 ppm anhydride content is known. All of Wu et al, Shida et al and Adur, referred to by the applicant as the preferred adhesive on page 29 of the specification, disclose that the preferred adhesive is known and has superior bonding capabilities. Refer to the Abstracts in each.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to the primary references to substitute the multilayer film of the prior art discussed by the applicant for the films of the primary references since Larson also teaches that multilayered films can be used for their gas barrier properties. The examiner also deems the use of the particular adhesive as obvious to one of ordinary skill in the art since it is known that superior adhesives provide better bonding

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properties. The examiner notes the applicant's examples in the specification, however, it is the examiners position that it is not unexpected to use an adhesive with slightly more anhydride content (i.e. at least 150 ppm as recited in claim 1 versus the prior arts teaching of 141 ppm) to form a superior bond since all of the adhesive references are drawn to this fact and this type of adhesive is known have superior bonding properties in composites. The spacing and/or size of the cells would also be deemed obvious to a skilled practitioner in order to vary the amount and location of cushioning supplied therefrom.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Donald Loney whose telephone number is (571) 272-1493. The examiner can normally be reached on Mon, Tues, Thurs and Fri. 8AM-4PM, flex schedule.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 571 272-1498. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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A handwritten signature in black ink, appearing to read "Donald J. Loney", with a large, sweeping checkmark-like flourish at the end.

Donald Loney
Primary Examiner
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DJL:D.Loney
02/18/05